

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

CHARLENE CARTER,

Plaintiff,

v.

SOUTHWEST AIRLINES CO., AND
TRANSPORT WORKERS UNION
OF AMERICA LOCAL 556,

Defendants.

§
§
§
§
§
§
§
§
§
§
§

Civil Action No. 03:17-cv-02278-S

DECLARATION OF MICHELE HAYDEL GEHRKE

I, Michele Haydel Gehrke, declare as follows:

1. I am a Partner at Reed Smith LLP and counsel for Defendant Southwest Airlines Co. (“Southwest”) in the above-captioned action. I have personal knowledge of the facts stated in this declaration and if called to testify, could competently testify thereto.

2. Charlene Carter (“Plaintiff”) filed the Third Amended Complaint (“Complaint”) on March 1, 2019. The Complaint included all claims that this Court dismissed with prejudice on February 1, 2019.

3. On March 7, 2019, I emailed Plaintiff’s counsel, Matthew Gilliam, and asked that he file a corrected Complaint that excludes the dismissed causes of action so as to avoid unnecessary confusion and to comply with the Court’s order. I indicated that this could be done by a stipulation or an errata filing. Plaintiff’s counsel rejected my request. However, Plaintiff’s counsel agreed to stipulate that “certain claims in the Third Amended Complaint were dismissed with prejudice per the Court’s order and that Defendants need not file an answer or other response

to those claims.” A true and correct copy of my March 7, 2019 correspondence with Plaintiff’s counsel is attached hereto as **Exhibit A**.

4. On March 12, 2019, I spoke to Matthew Gilliam regarding the inclusion of dismissed claims in the Third Amended Complaint. Counsel stated that he would not remove the causes of action for appellate purposes.

5. On March 13, 2019, I informed Matthew Gilliam that Southwest intended to file a Motion to Strike, stating: “To avoid confusion down the road, we intend to file a motion to strike by the deadline. If you change your position on further amending the complaint to conform to the Court’s order, please let us know.” A true and correct copy of this correspondence is attached hereto as **Exhibit B**.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed in San Francisco, California on March 15, 2019.

/s/ Michele Haydel Gehrke
Michele Haydel Gehrke

EXHIBIT A

Chavez, Lindi

From: Matthew B. Gilliam <mbg@nrtw.org>
Sent: Thursday, March 7, 2019 2:50 PM
To: Gehrke, Michele Haydel; Jeff D. Jennings; agreenfield@candglegal.com
Cc: Morris, Brian K.; Jason Winford
Subject: RE: Carter's Third Amended Complaint

EXTERNAL E-MAIL

Michele,

If you would like, we could prepare a joint document stipulating that certain claims in the Third Amended Complaint were dismissed with prejudice per the Court's order and that Defendants need not file an answer or other response to those claims. Let me know your thoughts.

Thanks,
Matt

Matthew B. Gilliam

Staff Attorney (*admitted and licensed to practice only in New York and West Virginia*)
c/o National Right to Work Legal Defense Foundation, Inc.
8001 Braddock Road, Ste. 600, Springfield, VA 22160
O: 703-770-3339 F: 703-321-9319
Email: mbg@nrtw.org Web: www.nrtw.org

NOTICE: This E-mail (including attachments) is covered by the Electronic Communications Privacy Act, 18 U.S.C. §§ 2510-2521, is confidential and may be legally privileged. If you are not the intended recipient, you are hereby notified that any retention, dissemination, distribution, or copying of this communication is strictly prohibited. Please reply to the sender that you have received the message in error, then delete it.

From: Gehrke, Michele Haydel [mailto:MGehrke@reedsmith.com]
Sent: Thursday, March 7, 2019 12:43 PM
To: Matthew B. Gilliam; Jeff D. Jennings; agreenfield@candglegal.com
Cc: Morris, Brian K.; Jason Winford
Subject: RE: Carter's Third Amended Complaint

In my experience, when the Court dismisses entire counts and then Plaintiff is given leave to amend a different count, Plaintiff does not include the dismissed counts in the new amended complaint. They are out of the case and just creates confusion and more work. For example, when Defendants file their answer we have to respond paragraph by paragraph.

Michele Haydel Gehrke
+1 415-659-4798
mgehrke@reedsmith.com

Reed Smith LLP
101 Second Street

Suite 1800
San Francisco, CA 94105-3659
+1 415 543 8700
Fax +1 415 391 8269

From: Matthew B. Gilliam <mbg@nrtw.org>

Sent: Thursday, March 7, 2019 9:41 AM

To: Gehrke, Michele Haydel <MGehrke@reedsmith.com>; Jeff D. Jennings <jdj@nrtw.org>; agreenfield@candglegal.com

Cc: Morris, Brian K. <BMorris@reedsmith.com>; Jason Winford <jwinford@jenkinswatkins.com>

Subject: RE: Carter's Third Amended Complaint

EXTERNAL E-MAIL

Michele,

The only claim that was amended by the Third Amended Complaint was the DFR claim. Comporting with the Court's decision does not require omitting our other claims from the Amended Complaint, if that is what you are suggesting. If you are suggesting something else, feel free to explain. We do not see how the Complaint does not comport with the Court's decision on the motions to dismiss.

Thanks,
Matt

Matthew B. Gilliam

Staff Attorney (*admitted and licensed to practice only in New York and West Virginia*)

c/o National Right to Work Legal Defense Foundation, Inc.

8001 Braddock Road, Ste. 600, Springfield, VA 22160

O: 703-770-3339 F: 703-321-9319

Email: mbg@nrtw.org Web: www.nrtw.org

NOTICE: This E-mail (including attachments) is covered by the Electronic Communications Privacy Act, 18 U.S.C. §§ 2510-2521, is confidential and may be legally privileged. If you are not the intended recipient, you are hereby notified that any retention, dissemination, distribution, or copying of this communication is strictly prohibited. Please reply to the sender that you have received the message in error, then delete it.

From: Gehrke, Michele Haydel [<mailto:MGehrke@reedsmith.com>]

Sent: Thursday, March 7, 2019 12:33 PM

To: Matthew B. Gilliam; Jeff D. Jennings; agreenfield@candglegal.com

Cc: Morris, Brian K.

Subject: Carter's Third Amended Complaint

Matt and Jeff,

We have reviewed Carter's Third Amended Complaint and write to ask that you re-file a corrected version that comports with the Court's decision on the motions to dismiss. The Court dismissed Counts 1 and 2 with prejudice (RLA Section Third and Fourth) as well as Count 4 as to the Constitutional claims since Southwest and the Union are not state actors. Carter was only given leave to amend as to Count 3, the DFR claim. As drafted, the Third Amended Complaint is confusing as to the dismissed claims. Please let us know if you are willing to do so and we can figure out the best way to do it (stipulation or errata filing, etc). Thanks!

Michele Haydel Gehrke

+1 415-659-4798

EXHIBIT B

Chavez, Lindi

From: Gehrke, Michele Haydel
Sent: Wednesday, March 13, 2019 4:56 PM
To: Matthew B. Gilliam; Jeff D. Jennings; agreenfield@candglegal.com
Cc: Morris, Brian K.; Jason Winford
Subject: RE: Carter's Third Amended Complaint

Matt,
Thanks for preparing the stipulation. I've discussed with Southwest and Adam. Both defendants remain concerned about Carter continuing to include dismissed claims/allegations in the amended complaint. To avoid confusion down the road, we intend to file a motion to strike by the deadline. If you change your position on further amending the complaint to conform to the Court's order, please let us know.

Best,
Michele

Michele Gehrke
mgehrke@reedsmith.com
415-659-4798

From: Matthew B. Gilliam <mbg@nrtw.org>
Date: Wednesday, Mar 13, 2019, 6:44 AM
To: Gehrke, Michele Haydel <MGehrke@reedsmith.com>, Jeff D. Jennings <jdj@nrtw.org>, agreenfield@candglegal.com <agreenfield@candglegal.com>
Cc: Morris, Brian K. <BMorris@reedsmith.com>, Jason Winford <jwinford@jenkinswatkins.com>
Subject: RE: Carter's Third Amended Complaint

EXTERNAL E-MAIL

Good morning, everyone.

Yesterday I spoke with Michele about drafting a joint stipulation as described below. With your permission, I can file a stipulation to make it clear that Defendants need not respond to the claims that were dismissed.

Thanks,
Matt

Matthew B. Gilliam
Staff Attorney (*admitted and licensed to practice only in New York and West Virginia*)
c/o National Right to Work Legal Defense Foundation, Inc.
8001 Braddock Road, Ste. 600, Springfield, VA 22160
O: 703-770-3339 F: 703-321-9319
Email: mbg@nrtw.org Web: www.nrtw.org

NOTICE: This E-mail (including attachments) is covered by the Electronic Communications Privacy Act, 18 U.S.C. §§ 2510-2521, is confidential and may be legally privileged. If you are not the intended recipient, you are hereby notified that any retention, dissemination, distribution, or copying of this communication is strictly prohibited. Please reply to the sender that you have received the message in error, then delete it.

From: Matthew B. Gilliam
Sent: Thursday, March 7, 2019 3:50 PM
To: 'Gehrke, Michele Haydel'; Jeff D. Jennings; agreenfield@candglegal.com
Cc: Morris, Brian K.; Jason Winford
Subject: RE: Carter's Third Amended Complaint

Michele,

If you would like, we could prepare a joint document stipulating that certain claims in the Third Amended Complaint were dismissed with prejudice per the Court's order and that Defendants need not file an answer or other response to those claims. Let me know your thoughts.

Thanks,
Matt

Matthew B. Gilliam
Staff Attorney (*admitted and licensed to practice only in New York and West Virginia*)
c/o National Right to Work Legal Defense Foundation, Inc.
8001 Braddock Road, Ste. 600, Springfield, VA 22160
O: 703-770-3339 F: 703-321-9319
Email: mbg@nrtw.org Web: www.nrtw.org

NOTICE: This E-mail (including attachments) is covered by the Electronic Communications Privacy Act, 18 U.S.C. §§ 2510-2521, is confidential and may be legally privileged. If you are not the intended recipient, you are hereby notified that any retention, dissemination, distribution, or copying of this communication is strictly prohibited. Please reply to the sender that you have received the message in error, then delete it.

From: Gehrke, Michele Haydel [<mailto:MGehrke@reedsmith.com>]
Sent: Thursday, March 7, 2019 12:43 PM
To: Matthew B. Gilliam; Jeff D. Jennings; agreenfield@candglegal.com
Cc: Morris, Brian K.; Jason Winford
Subject: RE: Carter's Third Amended Complaint

In my experience, when the Court dismisses entire counts and then Plaintiff is given leave to amend a different count, Plaintiff does not include the dismissed counts in the new amended complaint. They are out of the case and just creates confusion and more work. For example, when Defendants file their answer we have to respond paragraph by paragraph.

Michele Haydel Gehrke
+1 415-659-4798
mgehrke@reedsmith.com

Reed Smith LLP
101 Second Street
Suite 1800
San Francisco, CA 94105-3659
+1 415 543 8700
Fax +1 415 391 8269

From: Matthew B. Gilliam <mbg@nrtw.org>

Sent: Thursday, March 7, 2019 9:41 AM

To: Gehrke, Michele Haydel <MGehrke@reedsmith.com>; Jeff D. Jennings <jdj@nrtw.org>; agreenfield@candglegal.com

Cc: Morris, Brian K. <BMorris@reedsmith.com>; Jason Winford <jwinford@jenkinswatkins.com>

Subject: RE: Carter's Third Amended Complaint

EXTERNAL E-MAIL

Michele,

The only claim that was amended by the Third Amended Complaint was the DFR claim. Comporting with the Court's decision does not require omitting our other claims from the Amended Complaint, if that is what you are suggesting. If you are suggesting something else, feel free to explain. We do not see how the Complaint does not comport with the Court's decision on the motions to dismiss.

Thanks,
Matt

Matthew B. Gilliam

Staff Attorney (*admitted and licensed to practice only in New York and West Virginia*)

c/o National Right to Work Legal Defense Foundation, Inc.

8001 Braddock Road, Ste. 600, Springfield, VA 22160

O: 703-770-3339 F: 703-321-9319

Email: mbg@nrtw.org Web: www.nrtw.org

NOTICE: This E-mail (including attachments) is covered by the Electronic Communications Privacy Act, 18 U.S.C. §§ 2510-2521, is confidential and may be legally privileged. If you are not the intended recipient, you are hereby notified that any retention, dissemination, distribution, or copying of this communication is strictly prohibited. Please reply to the sender that you have received the message in error, then delete it.

From: Gehrke, Michele Haydel [<mailto:MGehrke@reedsmith.com>]

Sent: Thursday, March 7, 2019 12:33 PM

To: Matthew B. Gilliam; Jeff D. Jennings; agreenfield@candglegal.com

Cc: Morris, Brian K.

Subject: Carter's Third Amended Complaint

Matt and Jeff,

We have reviewed Carter's Third Amended Complaint and write to ask that you re-file a corrected version that comports with the Court's decision on the motions to dismiss. The Court dismissed Counts 1 and 2 with prejudice (RLA Section Third and Fourth) as well as Count 4 as to the Constitutional claims since Southwest and the Union are not state actors. Carter was only given leave to amend as to Count 3, the DFR claim. As drafted, the Third Amended Complaint is confusing as to the dismissed claims. Please let us know if you are willing to do so and we can figure out the best way to do it (stipulation or errata filing, etc). Thanks!

Michele Haydel Gehrke

+1 415-659-4798

mgehrke@reedsmith.com

Reed Smith LLP
101 Second Street

Suite 1800
San Francisco, CA 94105-3659
+1 415 543 8700
Fax +1 415 391 8269

* * *

This E-mail, along with any attachments, is considered confidential and may well be legally privileged. If you have received it in error, you are on notice of its status. Please notify us immediately by reply e-mail and then delete this message from your system. Please do not copy it or use it for any purposes, or disclose its contents to any other person. Thank you for your cooperation.

Disclaimer Version RS.US.201.407.01